

Before the
Federal Communications Commission
Washington, D.C. 20554

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NOV 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of |) | |
| |) | |
| Access Charge Reform |) | CC Docket No. 96-262 |
| |) | |
| Price Cap Performance Review |) | CC Docket No. 94-1 |
| for Local Exchange Carriers |) | |
| |) | |
| Interexchange Carrier Purchases of Switched |) | |
| Access Services Offered by Competitive Local |) | CCB/CPD File No. 98-63 |
| Exchange Carriers |) | |

REPLY COMMENTS OF CTSI, INC.

CTSI, Inc. ("CTSI"), by its counsel, and pursuant to the Commission's August 27, 1999, Notice of Proposed Rulemaking ("*NPRM*"), submits these Reply Comments in the above-captioned proceeding. CTSI emphasizes two points. First, the Commission should assure that any benchmark approach is not burdensome to CLECs. Second, if the Commission does adopt a benchmark approach, it must take into account the unique nature of CLECs serving rural or less densely populated markets and must not adopt as the benchmark the ILEC's rates in whose service area the CLEC is operating.

I. The Commission Must Approach Benchmark Regulation With Caution

The Commission should be wary of adopting a benchmark approach to regulation of CLEC interstate access charges. CTSI believes that market forces are sufficient to discipline

CLEC access charges, and that reliance on market forces is the least intrusive method to address CLEC access charges. If the Commission chooses to adopt a benchmark approach, the Commission must do so in a manner that is not burdensome to CLEC's. The Commission should assure that benchmark regulation does not cause economic harm to CLECs, create undue administrative burdens, create barriers to entry for prospective CLECs, or stifle competition. The Commission's past experience with benchmark regulation, of cable service rates under the 1992 Cable Act,¹ shows that this type of regulation can easily turn about to be extremely burdensome and complicated.

In order to avoid burdensome benchmark regulation, the Commission must refrain from adopting a benchmark that establishes a maximum lawful rate that is so low as to fail to address the CLECs' higher per customer costs, including any costs of compliance imposed by benchmark regulation. The Commission should also avoid undue administrative costs that a benchmark approach could impose on CLECs and regulators. Finally, the Commission should not establish a benchmark that effectively requires CLECs to abide by the same rate structure as the ILECs.

II. ILEC Rates Are Not An Appropriate Benchmark for CLEC Rates

In no event should the Commission determine that the benchmark for a CLEC is the ILEC rates in whose service area the CLEC competes. As explained below, a benchmark rate set to ILEC rates would be burdensome to many CLECs, especially CLECs in rural or less densely populated areas. CLECs vary greatly in size, form, financing, business plan, and technology, and

¹ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation*, MM Docket No. 92-266, 8 FCC Rcd 5631 (1993).

their costs per subscriber vary greatly. No single rate level can accommodate all of the variations among the CLECs. Any benchmark regulation must consider that some CLECs will need to charge beyond the benchmark in order to accommodate their particular circumstances. At most, ILEC rates should serve only as the starting point in the Commission's analysis, and then be adjusted upward based on these factors and the factors described below.

CLECs are start-up companies. As such, CLECs initially have fewer customers over which to spread costs in contrast to long established ILECs who possess an overwhelming share of local service subscribers. Thus, CLEC access rates can be expected to be higher during the start-up phase when costs per subscriber served is relatively high.² In addition, a CLEC's cost per subscriber will be higher than those of an ILEC because of lack of economies of scale, costs of obtaining state certification, franchising and rights-of-way costs, and building access contracts and fees. As the Commission observed in the *NPRM*, "[w]e acknowledge that CLEC access rate may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs."³

The Commission must also consider that the decision of how much of start-up costs should be recovered initially, or deferred, is a key discretionary business decision. Rates are not unreasonable under the Act merely because a start-up company charges somewhat higher rates to relatively fewer customers. Experience has shown that new competitive services do not need to

² See Comments of McLeodUSA at 3.

³ *NPRM*, para. 244.

be rate regulated, but instead will be disciplined by the marketplace. For example, compare the cost of a home computer in 1990 with the cost of one today, or compare the cost of a digital television today with what it will likely cost in five years. It is not at all unreasonable to expect the relatively new CLECs to have higher per unit costs and rates than those of the ILECs who have been operating for decades.

III. CLECs Providing Service to Rural or Less Densely Populated Areas Have Unique Costs and Circumstances, And Should Not Be Benchmarked Against ILEC Rates

In addition to the differences between CLECs and ILECs in general, the Commission must be mindful that CLECs serving rural or less densely populated areas have unique costs and circumstances that make benchmarking them against ILEC rates even less appropriate. Rural CLECs have fewer customers and they are spread out over larger geographic areas. Thus, a rural CLEC has a higher cost per customer to deploy its services. In addition, many ILECs, including the ones in the service areas provided by CTSI, average their rates throughout the state. Since rural CLECs do not have the benefit of offsetting rural expenses with an urban subscriber base, the CLEC must charge more for access than a rate averaged ILEC in the same market in order to recover those costs.⁴ Thus, subsidized ILEC local service rates would effectively cap a CLEC's ability to recover its investment in these markets. The higher cost of entering a rural or less densely populated area, and the effects of averaging on the rates in those areas, have already discouraged many CLECs from aggressively targeting third tier and rural local exchange markets. In considering the proposals made in the Notice, the Commission must be careful not

⁴ See Comments of RCI at 1.

to erect further barriers to CLEC entry in such markets by establishing as a benchmark the average rate charged by the ILEC serving those markets.

IV. The Commission Should Adopt The Least Intrusive Benchmark Possible For CLECs Providing Service To Rural Or Less Densely Populated Areas

Many parties agree that the Commission should adopt the least intrusive means of regulation.⁵ If the Commission adopts a benchmark approach, it should for the above reasons adopt a benchmark that permits CLECs to charge, and requires IXC's to pay, rates that are higher than the ILEC rate in whose area the CLEC competes. CTSI and others⁶ suggest that the Commission therefore consider choosing as a benchmark a rate that is among the high end of ILEC rates such as National Exchange Carrier Association ("NECA") rates.

NECA rates more accurately reflect the position of CLECs. Like the NECA carriers, rural CLECs have relatively small networks and carry relatively small volumes of traffic on their networks. NECA rates more closely approximate the unique costs and circumstances of providing service in less densely populated areas experienced by CLECs. In addition to NECA, the proposal by The Association for Local Telecommunications Services ("ALTS") also considers the costs and circumstances of the small rural carriers.

Therefore, if the Commission chooses any benchmark for rural CLECs, that benchmark should be one, like NECA that considers the factors unique to providing service in less densely populated areas.

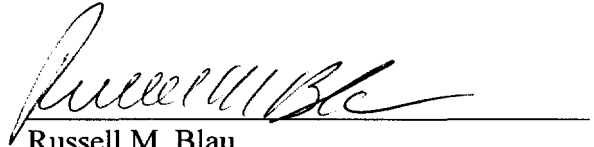
⁵ See Comments of Bell Atlantic at 24-27; GTE at 49; MCI WorldCom at 18.

⁶ See Comments of McLeodUSA at 4, 5.

V. Conclusion

For the foregoing reasons, CTSI, Inc. submits that the Commission should not establish a benchmark that limits rural CLECs to charging the same rates for access as the ILEC in their area. If the Commission chooses to establish benchmark rates, it should use NECA, or higher, rates as the benchmark, especially in rural or less densely populated areas.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Russell M. Blau", is written over a horizontal line.

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CERTIFICATE OF SERVICE

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